IN THE UNITED STATES COURT OF FEDERAL CLAIMS

CLAUDE MAYO CONSTRUCTION COMPANY, INC.,)
Plaintiff,)) No. 15-1263C
v.) (Judge Kaplan)
THE UNITED STATES,)
Defendant.)

JOINT MOTION TO MODIFY NOVEMBER 26, 2018 SCHEDULING ORDER

Pursuant to Rules 6(b)(1) and 6.1 of the United States Court of Federal Claims (RCFC), plaintiff, Claude Mayo Construction Company, Inc. (CMCC), and defendant, the United States (the parties), jointly respectfully request that the Court modify its November 26, 2018 scheduling order (Dkt. No. 40) to grant the parties additional time to complete discovery pursuant to the schedule proposed in the table below. Fact discovery is currently scheduled to close on April 1, 2019, with expert discovery to close October 4, 2019, and a joint status report regarding further proceedings due by October 18, 2019. This is the parties' third request for a modification of the schedule.

We respectfully submit that good cause exists for the requested schedule modification. In accordance with the Court's prior scheduling orders, the parties exchanged initial disclosures in the fall of 2017, identifying numerous potential witnesses. The parties subsequently propounded written discovery requests on one another, including document demands and interrogatories in the winter of 2017 and spring of 2018. As a result of those demands, the parties produced tens of thousands of pages of documents relating to the construction project at issue in this matter (Plaintiff produced approximately 45,000 pages and the Government produced approximately 110,000 pages of documents). Due to the volume of documents produced, it took additional time before the parties were prepared to proceed with depositions.

The parties conducted depositions of two key witnesses, a government contracting officer (Charles Ferro) and a project manager (Erin Bishop), in Syracuse, New York, on October 10 and 11, 2018. The parties then scheduled for January and the first week of February 2019, depositions of the principal of the Plaintiff (Claude Mayo), two other party witnesses (another contracting officer who was significantly involved in the project (David Bullard) and the Government's subcontracted construction quality manager (Don Davidson)), and four nonparties (several of the subcontractors that were involved in the project and a representative of the general contractor that took over the project after Plaintiff was terminated).

At the end of the day on December 21, 2018, however, the appropriations act that had been funding the Department of Justice expired. On January 25, 2018, appropriations were restored for three weeks, with further funding to the Department of Justice appropriated on February 15, 2019. During the 35-day period of the lapse in appropriations, Department of Justice attorneys were prohibited from working, even on a voluntary basis, except in very limited circumstances, including "emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342. Thus, during that 35-day lapse in appropriations, counsel for the defendant was unable to work on this or any other matter, including preparing for or conducting the scheduled depositions. Nor did counsel for plaintiff wish to prepare for depositions that were at that point highly likely to be postponed. Eventually, as the lapse in appropriations continued, the parties were forced to postpone these scheduled depositions.

After addressing witness and counsel availability, the parties have now been able to reschedule some of these postponed depositions during the first week of April 2019, and expect to be able to reschedule the remainder of these depositions later in April or in May 2019. We hope to be able to complete fact discovery by this summer. Given the current schedule, however, an enlargement of deadlines is necessary. Granting this joint request for enlargement

will not cause any material inconvenience or prejudice. Accordingly, the parties respectfully propose that the Court adopt the following modified schedule for discovery in this case:

Close of fact discovery (incl. exchange of documents, depositions)	July 1, 2019
Designation of expert witnesses, if any	August 3, 2019
Plaintiff's expert(s) report due, if any	September 3, 2019
Defendant's expert(s) report due, if any	November 5, 2019
Close of expert discovery (incl. depositions)	January 4, 2020
Parties file joint status report as to how case will proceed (incl. proposed schedule for Rule 56 motion(s) if desired)	January 18, 2020

For the foregoing reasons, and, as set forth in detail above, the parties respectfully request that the Court grant our joint request for modification of the scheduling order.

Respectfully submitted,

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